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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:

RODEO CREEK GOLD, INC., *et. al.*

Debtor.

Chapter 11

Case No.: 3:13-bk-50301 (MKN)

**PENSION BENEFIT GUARANTY CORPORATION'S RESERVATION OF RIGHTS
WITH RESPECT TO DEBTORS' MOTION TO SELL**

The Pension Benefit Guaranty Corporation ("PBGC"), on its own and on behalf of the Rodeo Creek Gold, Inc. Retirement Plan (the "Pension Plan") hereby files this reservation of rights with respect to the Motion to Sell filed by Rodeo Creek Gold, Inc. and affiliated debtors (the "Debtors"). On April 25, 2013, PBGC filed its Objection to Debtors' Motion to Sell, docket number 405 ("Objection"), and PBGC incorporates the Objection here by reference. After reviewing the Proposed Asset Purchase Agreement in Connection With the Sale of the Debtors'

1 Assets, docket number 420 (“Proposed APA”), PBGC wishes to reserve its rights with respect to
2 Rock Creek Conservancy LLC (“Rock Creek”).

3 PBGC initially notes the lack of notice of the actual proposed terms of the sale. Although
4 the deadline to object to the sale was April 26, 2013 at 4:00 pm (Eastern), the Debtors did not
5 file the Proposed APA until after 11:00 pm (Eastern) on April 26, 2013. Failing to provide all
6 interested parties with the Proposed APA in advance of the objection deadline, and a mere three
7 business days before the sale hearing, does not provide meaningful notice and an opportunity to
8 be heard.
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10 With respect to Rock Creek, a non-debtor being acquired under the Proposed APA,
11 PBGC notes that the Debtors warrant that Rock Creek has no liabilities.¹ However, in the likely
12 event that the Rodeo Creek Inc. Retirement Plan (the “Pension Plan”) is terminated by PBGC
13 pursuant to 29 U.S.C. § 1342, Rock Creek will be jointly and severally liable for the Pension
14 Plan underfunding, currently estimated by PBGC to be \$2,138,179.² If PBGC terminates the
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27 ¹ APA section 4.12.

28 ² See 29 U.S.C. §§ 1082(c)(11)(B), 1307(e)(2), 1362.

1 Pension Plan, it reserves the right to seek recovery of the underfunding from every party liable to
2 PBGC under law, including Rock Creek.

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5 Dated: April 30, 2013
Washington, D.C.

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